NO. 3444

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

EMMA F. RUMSEY,

Appellant,

vs.

NEW YORK LIFE INSURANCE COMPANY, and BENSON, SMITH & COMPANY, LIMITED,

Appellees.

BRIEF OF BENSON, SMITH & COMPANY, LIMITED, ONE OF THE APPELLEES

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By....., Deputy Clerk.

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APPENDIX

CITATIONS

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STATEMENT OF THE CASE.

On June 13, 1916, Emma F. Rumsey, the appellant, filed in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, at Chambers, her amended bill in equity, in which she prayed that the policy issued by the New York Life Insurance Co. on the life of Samuel L. Rumsey, on June 11, 1903, be reformed by declaring her to be the beneficiary thereunder; that the New York Life Insurance Co. be decreed to pay to the complainant the amount specified in said policy ($5000), with interest from July 27, 1910; that Benson, Smith & Company be declared the trustee for the complainant of said policy upon payment by her of such sums of money as it may have

paid as premiums on said policy on her behalf; and for general relief (Tr., pp. 20, 21).

On October 10, 1916, Benson, Smith & Company filed its answer, admitting many of the averments contained in the amended bill of complaint, denying the vital averments on which the complainant based her claim for relief, and setting up laches as an affirmative defense (Tr., pp. 101-113).

The case was then submitted to the trial judge upon an agreed statement of facts (Tr., pp. 117-403) in which was included certain correspondence (Sec. IV, p. 130; Sec. VI, p. 255; Sec. VIII, p. 282) and certain depositions (Sec. V, p. 187), and it was agreed (Sec. XIX, p. 402) that testimony could be introduced at the hearing, and that in the event of any conflict between any stipulated fact and any deposition, document or evidence in said stipulation, or evidence adduced at the hearing, the court could disregard any such statement and consider in lieu thereof such other deposition, document or evidence. The trial judge referred to that clause (Tr., p. 416) in connection with his ruling that the policy in question was a wagering contract. His conclusion on that point, however, was a conclusion of law, and not a finding of fact. Whatever it was, it was overruled by the Supreme Court.

The agreed facts were, in substance, (1) that Benson, Smith & Company, Limited, was incorporated in 1898 for the purpose of buying, selling and dealing in and manufacturing drugs, medicines and other commodities pertaining to said line of business, with

a capital stock of $70,000, divided into 700 shares of the par value of $100 each (Tr., pp. 118-121); (2) that on June 11, 1903, Samuel L. Rumsey made application to the New York Life Insurance Company for insurance on his own life in the sum of $5000 (Tr., p. 121); (3) that since the year 1903 the said Samuel L. Rumsey, and one George W. Smith and one Alexis J. Gignoux were officers, directors and stockholders of and in said Benson, Smith & Company, Limited, the said Smith being president, the said Rumsey being treasurer, and the said Gignoux being secretary thereof (Tr., p. 122); (4) that for the purpose of protecting the interests of the said Benson, Smith & Company, in the event of the death of any of the said Rumsey, Smith and Gignoux, the said Rumsey, Smith and Gignoux agreed to take out a policy of insurance in the sum of $5000 on their respective lives in favor of the corporation, and that in accordance with said agreement the policies of insurance so taken out were placed in the custody and possession of Benson, Smith & Company, the beneficiary named in each of said policies (Tr., p. 122); (5) that said applications were accepted by said New York Life Insurance Co. and policies issued thereon, which were executed at the home office of said company at New York and delivered to Benson, Smith & Co. at Honolulu (Tr., pp. 123, 124); (6) that the policy so issued to the said Samuel L. Rumsey provided that "The insured, having reserved the right, may change the beneficiary or beneficiaries, at any time during the continuance of this policy, by

written notice to the company at the home office, provided this policy is not then assigned. * * * No designation, or change of beneficary or declaration of an absolute beneficiary, shall take effect until endorsed on this policy by the company at the home office (Tr., p. 125); (7) that after the execution and delivery of said policies Benson, Smith & Company paid and continued to pay all premiums due thereunder (Tr., p. 127); (8) that at the time of the delivery of said policies the said Smith owned 363 shares, the said Rumsey owned 100 shares and the said Gignoux owned 30 shares of the capital stock of the corporation out of a total of 500 shares issued (Tr., p. 127); (9) that on August 31, 1906, the complainant, Emma F. Rumsey, and the said Samuel L. Rumsey were married at Denver, Colorado, and thereafter lived there until the death of Rumsey (Tr., p. 128); (10) that on July 9, 1907, Rumsey transferred his said 100 shares of said capital stock to the complainant, and shortly thereafter she sold 50 shares thereof to Benson, Smith & Company, and after the death of said Rumsey the complainant sold the remaining 50 shares to said company (Tr., p. 128); that in January, 1904, Samuel L. Rumsey left the Territory of Hawaii and was never again actively connected with Benson, Smith & Company, or its business, and in February, 1905, he ceased to hold the office of treasurer and never thereafter drew any salary or compensation from the company (Tr., pp. 128, 129); (11) that until the recovery of judgment by Benson, Smith & Company against the New York

Life Insurance Company for the amount of said policy, Benson, Smith & Company held said policy, claiming the right to hold the same under and by virtue of the agreement relating thereto above referred to (Tr., pp. 129, 130); (12) that no change of beneficiary was ever at any time endorsed upon the policy though a request to have Emma F. Rumsey so named in place of Benson, Smith & Company was made by Samuel L. Rumsey on July 9, 1907, the reason being that the policy did not accompany the request, since Benson, Smith & Company held possession of it under the claim that it was entitled to possession of the policy and to the proceeds thereof in the event of the death of Rumsey (Tr., pp. 255, 256); that on June 11, 1910, the complainant caused to be remitted to the New York Life Insurance Company, the amount of the annual premium upon said policy, but it had already been paid by Benson, Smith & Company, and was thereupon tendered back to the complainant, who refused to accept it, and it was finally paid into court in an action instituted by the complainant against the New York Life Insurance Company in the District Court of the city and county of Denver, Colorado, where it has since remained (Tr., pp. 268-272); (13) that the said Samuel L. Rumsey died at Los Angeles, California, on July 27, 1910, leaving the complainant his lawful wife (Tr., p. 302); that on August 15, 1910, proofs of death were presented to the New York Life Insurance Company by the complainant on forms furnished to the complainant by the company (Tr., p. 302); (14) that

the company has at all times refused to pay the amount of the policy or any part thereof to the complainant (Tr., p. 306); (15) that on August 15, 1910, said Emma F. Rumsey instituted suit against the insurance company in the Denver court to recover the amount of the policy, but her complaint was dismissed, and the judgment was affirmed by the Supreme Court of Colorado; *Rumsey v. New York L. I. Co.,* 147 Pacific 337 (Tr., pp. 314-320); and (16) that on February 24, 1913, said Benson, Smith & Company recovered judgment against the New York Life Insurance Company for the amount of the policy, with interest and costs, which the company paid (Tr., pp. 375, 376, 384).

The circuit judge rendered a written opinion (Tr., pp. 404-432) upon which a decree was entered awarding judgment against the New York Life Insurance Company for the sum of $5000, with interest from August 15, 1910, and costs; decreeing Benson, Smith & Company trustee for the complainant with respect to the proceeds of the judgment recovered by it against the insurance company; awarding judgment against Benson, Smith & Company in the sum of $5959.55, with interest from April 3, 1913, less the sum of $1858.40, with interest from the date of the payments by it of premiums on the policy, and costs; and providing that the complainant should first have recourse against Benson, Smith & Company (Tr., pp. 433-436). From that decree the respondents appealed to the Supreme Court of Hawaii (Tr., p. 437) and obtained a reversal (Tr., pp. 442-452). The de-

cree was entered on October 2, 1919, remanding the cause to the circuit judge for further action compatible to the decision of the Supreme Court (Tr., p. 453). From that decree this appeal has been taken (Tr., p. 454), and the record does not show what further proceedings were had in the court below to which the cause was remanded.

ARGUMENT.

IN LIMINE. THE APPEAL SHOULD BE DISMISSED BY THIS COURT BECAUSE THE DECREE APPEALED FROM WAS NOT A FINAL DECREE.

By the decree entered by the Supreme Court of Hawaii, from which the present appeal has been taken, the decree of the circuit judge was "reversed and the cause remanded to the circuit judge for such further action compatible to the decision as may be necessary."

The judgment or decree of the highest court of a state (or Territory) remanding the case for further proceedings not inconsistent with the judgment or decree is not a final judgment or decree.

Winn v. Jackson, 12 Wheat. 135.
Moore v. Robbins, 18 Wall. 588.
District of Columbia v. McBlair, 124 U. S. 320.
Smith v. Adams, 130 U. S. 167.
Lodge v. Twell, 135 U. S. 232.
Haseltine v. Central Nat. Bank, 183 U. S. 130.
Louisiana Nav. Co. v. Commission, 226 U. S.

The form of the judgment is the test of its finality.

Haseltine v. Central Nat. Bank, supra.

Louisiana Nav. Co. v. Commission, supra.

Schlosser v. Hemphill, 198 U. S. 173.

Congdon v. People, 200 U. S. 612.

A judgment of reversal is final only when it also enters or directs the entry of a judgment which disposes of the case.

Smith v. Adams, supra.

Hurlbut Land Co. v. Truscott, 165 U. S. 719.

Oklahoma v. Neville, 181 U. S. 615.

It being a jurisdictional defect the appellate court will dismiss of its own motion.

Estis v. Traube Davis Co., 128 U. S. 225.

Memphis Keeley Inst. v. Keeley Co., 144 Fed. 628.

Stillwagon v. B. & O. R. Co., 159 Fed. 97.

Montana Ore Co. v. Butte, etc., Min. Co., 126 Fed. 168.

Southern R. Co. v. Postal Cable Co., 93 Fed. 393.

ON THE MERITS. THE APPELLANT IS NOT ENTITLED TO ANY RELIEF.

The bill of complaint averred (par. IV, Tr., p. 4) that Rumsey made application for an insurance policy upon his life upon which the insurance company issued the policy and delivered it to Rumsey at Honolulu, and that (par. VII, Tr., p. 6) by reason of the connection of Rumsey with Benson, Smith & Co.

(i. e., as treasurer) the policy passed into the physical possession of the said Benson, Smith & Company and was left in its possession when Rumsey departed from the Territory.

The agreed facts, however, stated the circumstances somewhat differently. It there appears that (par. III, Tr., p. 122) for the purpose of protecting the interests of Benson, Smith & Company in the event of the death of any of them, the said Smith, Rumsey and Gignoux agreed to take out a policy of insurance in the sum of $5000 on their respective lives in favor of Benson, Smith & Company, and that in accordance with said agreement the policies of insurance so taken out were placed in the custody and possession of Benson, Smith & Company.

The trial judge and the Supreme Court of Hawaii properly adopted and acted upon the facts as they were set forth in the stipulation and not as they were imperfectly stated in the bill of complaint; the trial judge, however, misapplied the law to the facts.

The trial judge took the view that the entire transaction was nothing more or less than a series of wagering contracts wherein and whereby Benson, Smith & Company undertook to speculate upon the lives of its three principal stockholders (Tr., p. 420). In saying that the trial judge seems to have proceeded upon the notion that Benson, Smith & Company had taken out the policy on the life of Rumsey. If that were the case an insurable interest in Rumsey's life would have been necessary. The trial judge then expressed the further views that Benson, Smith

& Company, at the time the policy was taken out, had no insurable interest (Tr., p. 422), and that if there had been an insurable interest at that time it had ceased when Rumsey's relationship to the company was dissolved (Tr., p. 426).

We will refer briefly to the three possible theories, and endeavor to show that upon reason and authority the appellant could prevail upon none of them.

First. If Benson, Smith & Company did insure the life of Rumsey for its own benefit there was an insurable interest to support it, and the fact, if it were such, that the insurable interest terminated before Rumsey died would not defeat the company's right to receive the proceeds of the policy. *Second.* If, as averred in the bill of complaint, Rumsey insured his own life in favor of Benson, Smith & Company, no insurable interest was necessary. *Third.* If the transaction was a mutual tri-party agreement, as set forth in the stipulation of agreed facts, it was supported by a valid consideration moving between each one and the others of the three parties to the agreement. We think this latter alternative is the correct one.

Benson, Smith & Company had an insurable interest in the life of Rumsey.

"An insurable interest exists whenever the relation between the assured and insured, whether by blood, marriage or commercial intercourse, is such that the assured has a reasonable expectation of deriving benefit from the continuation of the life of the

insured, or of suffering detriment or incurring liability through its termination."

Vance on Insurance, p. 129.

"Although, as was said by Mr. Justice Field, in *Warnock v. Davis,* 104 U. S. 775, it is not easy to define with precision what will constitute such an interest, it may be stated generally to exist whenever the relations between the insured and the beneficiary are such as to justify a reasonable expectation that the continuance of the life of the former will result in advantage or benefit to the latter."

Thomas v. Nat. Ben. Assn., 84 N. J. L., 281, 282.

"Indeed, it may be said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life. * * * The essential thing is that the policy shall be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the insured has no interest."

Conn. M. L. Ins. Co. v. Schaefer, 94 U. S. 457, 460.

"The very meaning of an insurable interest is an interest in having the life continue and so one that is opposed to crime. And, what perhaps is more important, the existence of such an interest makes a roughly selected class of persons who by their general relations with the person whose life is insured are less likely than criminals at large to attempt to compass his death."

Grigsby v. Russell, 222 U. S. 149, 155.

See, also,

May on Insurance, Sec. 76.

25 Cyc. 706.

Kentucky Ins. Co. v. Hamilton, 63 Fed. 93.

Kopetovske v. Mutual L. Ins. Co., 187 Fed. 499.
Mechanics Bank v. Comins, 72 N. H. 12.
Keckley v. Glass Co., 86 Oh. St. 213.
Mutual L. Ins. Co. v. Board, 115 Va. 836.
Wurzburg v. N. Y. Life Ins. Co. (Tenn.), L. R. A. 1918 E, 566.
Conn. M. L. Ins. Co. v. Luchs, 108 U. S. 498.

Smith, Rumsey and Gignoux had been intimate business associates for many years. In a comparatively small and close corporation like Benson, Smith & Company it is reasonable that the officers who were the principal stockholders should desire to retain all, or most, of the shares within their control. It is easy to imagine how the death of one of the three associates might, in the language of Vance, above quoted, result in the corporation suffering detriment if the stock held by one of them should pass into the hands of strangers or competitors. At the time the policy was taken out Rumsey was not only an officer and a stockholder, but by long association in the business had become familiar with its management and conduct. Certainly the company was interested in the continuation of his life. In the event of his death the company was entitled to the benefit of the insurance money to give it an advantage over others in the purchase of the stock so as to prevent its going into unfriendly hands. As an officer and a principal stockholder in the company Rumsey owed it such a moral obligation to see it through any difficulties that might have arisen as was referred to in the New Jersey case above cited.

The whole transaction of which the policy in question was a part was characterized by that good faith which was said to be the essential element in the Schaefer case. And the circumstances were entirely lacking in any of the earmarks of a wagering contract within the description of such a contract given by the Supreme Court of the United States. Public policy in connection with wagering contracts goes no further than to condemn what would create a condition where "the unscrupulous are free to bet on what life they choose," and to guard against "the danger that might arise from a general license to all to insure whom they like." *Grigsby v. Russell,* supra. No such element enters into the case at bar in the remotest degree. Certainly a holding that Benson, Smith & Company had an insurable interest in Rumsey's life would fall far short of a general license to all to insure whom they like.

There having been an insurable interest at the time the policy was obtained, the termination of such interest would not affect the right of the beneficiary to hold and recover on the policy.

Conn. M. L. Ins. Co. v. Schaefer, 94 U. S. 457, 461.

Wurzburg v. N. Y. Life Ins. Co. (Tenn.), L. R. A. 1918 E, 566.

Davis v. Brown, 159 Ind. 644, 646.

Courtois v. Grand Lodge, 135 Cal. 552.

Appeal of Carson, 113 Pa. St. 438, 447.

Keckley v. Glass Co., 86 Oh. St. 213, 228.

If the policy in question was taken out by Rumsey in favor of Benson, Smith & Company an insurable interest was not necessary.

"That one has an unlimited insurable interest in his own life is an elementary principle, as to the existence of which the cases are unanimous. It follows, therefore, that one may take out a policy of insurance on his own life and make it payable to whom he will. It is not necessary that the person for whose benefit it is taken should have an insurable interest."

1 Cooley's Briefs on Insurance, p. 252, and cases there cited.

Where a life insurance policy provides that no change of beneficiary shall take effect unless endorsed on the policy by the company at its home office, a change is not effected until the condition is fulfilled.

Freund v. Freund, 218 Ill. 189.
Rumsey v. N. Y. Life Ins. Co., 59 Colo. 71.
Sullivan v. Maroney, 76 N. J. E. 104.
Lloyd v. Royal Ins. Co., 245 Fed. 162.
Sangunitto v. Goldey, 84 N. Y. S. 989.

If, as we contend the fact here was, the policy in question was part of a mutual agreement between three men which rested on a valuable consideration moving between them, the interest of each party in his own life will support the transaction.

"There is no doubt that a man may effect an insurance on his own life for the benefit of a relative or friend; or two or more persons, on their joint lives, for the benefit of the survivor or survivors."

Conn. M. L. Ins. Co. v. Schaefer, supra.

In the case of *Jory v. Supreme Council,* 105 Cal. 20, 29, where the appellant claimed that she and her mother had entered into a mutual agreement whereby each should join a benefit society and make the other a beneficiary, and that she had carried out the agreement by paying dues, assessments, etc., the court said, "If these moneys were paid out by appellant under and by virtue of a contract between the parties, and in pursuance of this agreement for mutual insurance, then she has equities which entitle her to recognition in a court of justice."

Benson, Smith & Company had a vested right in the policy in question which was not defeated, and could not be defeated without its consent. Where, as here, the policy provides a certain method for changing the beneficiary, i. e., by endorsement on the policy by the company at its home office, such change can be made only in that way. Where a policy has been assigned, pledged or otherwise placed in the possession of one pursuant to some contract, the possession is an effectual pledge or guarantee that no change of beneficiary will be made. So long as the beneficiary holds the policy under such agreement, no change can be made. It is a stipulated fact (Tr., p. 122) "that in accordance with said agreement the policies of insurance so taken out were placed in the custody and possession of Benson, Smith & Company." It doubtless was the purpose of Smith, Rumsey and Gignoux that the company should, by virtue of its possession of the three policies, be secured in the carrying out of the agreement so entered into. No one of them could legally withdraw from the agreement and demand his policy in the manner a

tempted by Rumsey. A valuable consideration had already moved to him, i. e., the right of participating in the benefit which would have accrued to the company had either Smith or Gignoux died. That benefit having accrued to him it could not be returned. For several years he had had, as a stockholder in Benson, Smith & Company, the protection of the insurance on the lives of Smith and Gignoux. That Rumsey fully understood that is shown by his letter to Smith dated March 29, 1907 (Tr., p. 143), wherein he said, "My stock interests carries a limited benefit pro rata in all the policies issued for the benefit of the firm." The fact that he also expressed an erroneous view of his legal rights in the premises does not detract from the force of the statement quoted. Reference was made in the opinion of the trial judge to Smith's letter to Rumsey of January 22, 1907, in which he suggested that the policy could be assigned to Rumsey "after the payments for all your stock have been made and on the repayment to the firm of the amounts expended for annual premiums" (Tr., p. 141). That in no sense purported to be a statement of the purpose for which the policy had been taken out. At best it was a mere offer made by Smith entirely irrespective of the original object for which the insurance had been obtained, and altogether aside from any legal rights of the parties in the premises. That Smith, or the corporation, in 1907, was willing to do something which he or it was not legally obliged to do is entirely immaterial now,

especially as the suggestion or offer then made was not accepted or acted upon.

Benson, Smith & Company having a vested right in the policy, as the beneficiary named in it, no act of Rumsey or his wife could have defeated that right unless the company had voluntarily acquiesced by giving up the policy so that the beneficiary could be changed in the manner stipulated in the policy.

Even under the law applicable to death benefits in mutual beneficial societies where the beneficiary named in a certificate ordinarily has no vested right such a right may be acquired where, as in this case, a valuable consideration moved from the beneficiary.

Stronge v. K. of P., 189 N. Y. 346.
Grimbley v. Harrold, 125 Cal. 24.
Bernard v. Grand Lodge, 13 S. D. 132.

If the policy in question is to be regarded as Rumsey's, then the uncontradicated facts show that he assigned or pledged it to Benson, Smith & Company for a valuable consideration, namely, the payment of the premiums and the interest which Rumsey was given, through the company, in the policies on the lives of Smith and Gignoux.

"In the absence of any requirement in the policy or by statute that the assignment be in writing, a parol assignment accompanied by delivery of the policy is sufficient; and the delivery of the policy alone with intent that such delivery shall operate as an assignment is sufficient."

25 Cyc. 767.

See, also,

State v. Tomlinson, 16 Ind. App. 662.
Chapman v. McIlwrath, 77 Mo. 38.
Marcus v. Ins. Co., 68 N. Y. 625.

An insurance policy may be validly pledged by delivery without written assignment.

In re Baird, 245 Fed. 504, 507.

We are unable to see wherein the agreement, of which the policy in question formed a part, which was entered into in entire good faith by all the parties to it, and constituted a straightforward business arrangement, is contrary to public policy. At one time there seemed to be a disposition to overwork the public policy idea, but now the courts are less disposed to interfere with the agreements of parties where they do not interfere with the rights of others or the public welfare.

Robinson v. Thurston, 248 Fed. 420.

We contend, therefore, that upon no possible theory which the facts of this case permit of could the appellant prevail.

IF THE APPELLANT WAS EVER ENTITLED TO THE RELIEF PRAYED FOR IN HER BILL HER RIGHT WAS BARRED BY HER LACHES.

Under Section 2633 of the Revised Laws of Hawaii, 1915 (see Appendix), the period of limitation in actions of debt, assumpsit and replevin is six years.

Rumsey demanded possession of the insurance policy in his letter of August 30, 1907 (Tr., p. 156),

and the refusal to comply with the demand was contained in Smith's letter of September 25, 1907 (Tr., p. 162). All of the merits of the case were involved in that demand. It was made in order that the beneficiary could be changed in the manner provided in the policy. If Rumsey was then entitled to the possession of the policy he could have maintained an action of replevin for it. The statute of limitations began then to run and continued to run. Mrs. Rumsey stands in the shoes of her late husband. This suit was commenced on July 20, 1915, or nearly eight years after the cause of action accrued. The bill in this suit prays that the policy be reformed by declaring the complainant to be the beneficiary thereunder and that Benson, Smith & Company be declared the trustee of the policy for the complainant (Tr., p. 20). In other words, the relief sought by the bill is substantially the same as would have been obtained by an action of replevin for the policy.

It is an established rule that courts of equity, in determining the rights of parties before them, will either follow the statute of limitations applicable to the facts, or apply them by analogy. The statute having fixed the period of limitation by which a claim, if it had been made in a court of law, would have been barred, it is by analogy confined to the same period when asserted in a court of equity.

Willard v. Wood, 164 U. S. 502.
Carroll v. Green, 92 U. S. 509.
Hall v. Law, 102 U. S. 461.
Mandeville v. Lane, 28 Miss. 312.

Hawley v. Cramer, 4 Cow. (N. Y.) 717.
Kalaeokekoi v. Kahele, 5 Hawaii 47.
Williams v. Gulick, 6 Hawaii 162.
Hilo v. Liliuokalani, 15 Hawaii 507.

Viewed merely as a suit for an accounting, the remedy would be barred even though the cause of action did not accrue until the date of Rumsey's death, July 27, 1910.

Under Section 2638 of the Revised Laws of Hawaii, 1915 (see Appendix), an action to recover money upon a cause of action which arose in a foreign country must be commenced within four years after it accrued.

The policy in question was issued by the New York Life Insurance Co. in New York. The insurance money, by the terms of the policy, was payable in New York. It was, therefore, a New York contract.

An action on a contract, however, is governed by the law of the jurisdiction in which it is brought.
25 Cyc. 1018.

This suit not having been commenced within four years after Rumsey's death, the remedy by way of a decree for the payment of money was barred by the lapse of time.

We contend that (1) this appeal should be dismissed because not taken from a final decree, and

that (2) upon the merits of the case there should be a decree dismissing the bill of complaint.

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APPENDIX.

Revised Laws of Hawaii, 1915.

(Formerly Secs. 1971, 1976, R. L. Haw. 1905.)

Sec. 2633. Six Years. The following actions shall be commenced within six years next after the cause of such action accrued, and not after:

1. Actions for the recovery of any debt founded upon any contract, obligation or liability, excepting such as are brought upon the judgment or decree of some court of record;

2. Actions upon judgments rendered in any court not being a court of record;

3. Actions of debt for arrearages of rent;

4. Actions for taking, detaining or injuring any goods or chattels, including actions of replevin;

5. Special actions on the case for criminal conversation, for libels, or for any other injury to the persons or rights of any, except as otherwise provided.

Sec. 2638. Four Years. The following actions shall be commenced within four years after the cause of action accrued and not after. Actions for the recovery of any debt founded upon any contract, obligation or liability, where the cause of action has arisen in any foreign country, except such as are brought upon the judgment or decree of a court of record.